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Attorney Docket No.: 038738.49626US
Serial No. 09/762,676
PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: MARTIN MAUBACH

Serial No.: 09/762,676 Group Art Unit: 3652

Filed: JUNE 15, 2001 Examiner: Bratlie, Steven A.

Title: VEHICLE COMPRISING A LOADING FLOOR LOWER THAN
THE VEHICLE FLOOR, FOR RECEIVING A WHEEL CHAIR

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

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On June 11, 2003, Appellants appealed to the Board of Patent Appeals from the final rejection of claims 6, 7, 11 and 13. The following is Appellant's Appeal Brief submitted pursuant to 37 C.F.R. §1.192.

REAL PARTY IN INTEREST

DaimlerChrysler AG
Epplestrasse 225
70567 Stuttgart
Germany

RELATED APPEALS AND INTERFERENCES

There are no interferences known to Appellant or Appellant's legal representative, which will directly affect or be directly effected by or have a bearing on the Board's decision in the pending appeals.

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STATUS OF CLAIMS

This application currently contain claims 6-13 with claims 8-10 and 12 have been withdrawn from consideration and claims 6, 7, 11 and 13 being appealed.

STATUS OF AMENDMENTS

Subsequent to the Final patent Office of December 12, 2002 a reply was filed on April 11, 2003. The Reply contained no amendments. A Patent Office Advisory Action dated April 25, 2003 indicated that the Reply of April 11, 2003 did not place the application into condition for allowance however, the rejection under 35 U.S.C. 112, second paragraph, has been withdrawn in light of the Reply of April 11, 2003.

SUMMARY OF THE INVENTION

Appellant's invention, as defined by independent claims 6, 11 and 13 concerns the use of a vehicle having an improved wheelchair ramp. When the ramp is in a stored or unused first position it forms a flat surface with the floor of a vehicle, as shown in Figure 5. With this construction the vehicle cannot be identified as a vehicle for handicap persons. A separate floor section forms an offset load surface 4 which is lower than the vehicle floor. The ramp, when required to be used, pivots from the first or unused position toward the ground as shown in Figure 1 using a pivoting connection arranged outside the offset load surface 4, referred to as the floor section. After a wheelchair has proceeded up the ramp 6 it rests on the lower or offset load surface 4 and the ramp is secured in an upright position when

the floor section is occupied by the wheelchair as shown in Figure 4. With this structure, the loading and unloading is made considerable easier when compared with the prior art and provides excellent utilization of space. Additionally, when not in use the stored space 13 formed between the ramp 6 and the load surface 4 can be used for storing items that can be pushed in, as shown in Figure 2.

ISSUES

The sole issue to be decided by the Board of Appeals is whether claims 6, 7, 11 and 13 are properly rejected under 35 U.S.C. 103 as being unpatentable over British Patent 2,306,152 in view of Ressler U.S. Patent No. 5,137,413 or French Patent 2,598,362.

GROUPING OF THE CLAIMS

Appellants submit that claims 6, 7, 11 and 13 do not stand or fall together with respect to the rejection under 35 U.S.C. 103.

ARGUMENTS

Appellant's traversal of the rejection under 35 U.S.C. 103 is based on features within each of independent claims 6, 11 and 13 which are not shown or disclosed by the references or any obvious combination of the references to one of ordinary skill in the art.

According to the statement of the Final Rejection British Patent '152 discloses a lowered floor section 19 (presumably 29) mounted in the floor of a vehicle and a ramp 30 pivotally mounted on the floor section for movement between the claimed position. However, the ramp, according to the rejection, is not pivotally mounted at the outside of the floor section and the floor section does not support the wheelchair. These features are cited as being disclosed in the reference to Ressler or the French Patent '362. The conclusion of the rejection is that, in view of those secondary references, it would have been obvious to have mounted the ramp pivotally outside the floor section depending on the requirements of the vehicle and to have placed the ramp in an upright secured position in order to provide space for the wheelchair.

Appellant's submit that each of independent claims 6, 11 and 13 define subject matter which is not obvious from the proposed combination of references and furthermore submit that even if the references are combined there is no showing of features claimed in each of independent claims 6, 11 and 13.

The British Patent '152 is a ramp assembly which facilitates wheelchair access to a vehicle, most likely a bus. The ramp assembly includes a frame and ramp member pivotally mounted for movement between the first position where the ramp is retracted, as shown in Figure 2A, and a second position in which the ramp is extended, as shown in Figure 2C. The ramp member is pivotable about an axis which is not spaced inwardly of the ramp member, as acknowledged in the Final Rejection. It is stated to be an advantage of the offset disposition of the pivot axis

that the need for conventional “piano hinges” or the like at the edge of the ramp member is avoided. This is discussed at lines 6-8 of page 2 with further advantages discussed at lines 9-18. Each of these specific advantages discussed in the ‘152 reference indicate the importance given toward the specific construction of the pivoting section of the assembly.

This reference ‘152 has no disclosure or suggestion about the ramp pivoting about a connection from a lowered position in which the ramp forms one surface for the vehicle floor and is accommodated by a floor section that is lower than the vehicle floor wherein the floor section serves as a load surface for the wheelchair and the ramp remains in a secured upright position when the floor section is occupied by the wheelchair. The ramp of the ‘152 reference is strictly an access ramp with no load service for a wheelchair which is one of the claimed features of the present invention.

In addition to a failure of the ‘152 reference to disclose that the ramp is not pivotally mounted at the outside of the floor section the floor section of the ‘152 reference also does not support the wheelchair, as is acknowledged in the Final Rejection. Still further Appellants submit that there is no indication that the ramp, in an unfolded position, forms a surface with the floor of the vehicle or that the ramp remains in a secured upright position when the lowered floor section is occupied by the wheelchair.

The secondary reference to Ressler '413 provides an expanded interior space of a minivan in which the pivoting ramp provides access to a drop floor. Even if the system of Ressler is combined with the teachings of the '152 reference there is no showing of the claim limitations of independent claims 6, 11 and 13 whereby the ramp forms a same surface with a vehicle floor. The ramp 44 is either in the extended position at 44b or in the upright position at 44a but in no event is it on the same surface with the floor of the vehicle. Additionally, there is no indication that the hinge arrangement for rotation in the '413 reference would be substituted for the pivot axis system of the '152 reference in light of the above discussed advantages set forth in the '152 reference concerning the use of the pivot axis and its positioning, as detailed at page 2 of the '152 reference. Therefore the combination is not obvious and even if the combination were to be made against this obvious teaching there would still be no showing of the ramp forming one surface with the vehicle floor when it is in its lowered or unused position.

The French patent '362 shows a ramp which is able to be lowered so that a wheelchair may be loaded. A lowered floor retains the wheelchair. This reference also fails to disclose the ramp being on the same surface with the vehicle when it is in its unused or lowered position in addition to a floor section lower than the vehicle floor. Appellants submit that there is no prima facie case of obviousness because the proposed combination or motive to combine does not correspond and indeed conflicts with the teachings of the '152 reference. In addition to defeating the advantages of the pivoting combination of the '152 reference, the providing of space for a

wheelchair on the surface of the ramp assembly of the British Patent '152 entirely defeat the purpose of the ramp assembly. Therefore not only is there a lack of motive to combine but even if the references are combined there is no showing or teaching that one of ordinary skill in the art would make the necessary changes to meet the claimed invention defined by independent claims 6, 11 and 13.

Claim 6 is addressed to a vehicle having a ramp for a wheelchair whereas claim 11 concerns a vehicle ramp assembly and claim 13 concerns a method of making a vehicle with a ramp for a wheelchair. Claim 7 further limits independent claim 6 by reciting the ramp connection by means of a vertically displaceable pivot mounting which is separately patentable from independent claim 6.

APPENDIX

An appendix containing a copy of the claims is attached hereto.

CONCLUSION

Therefore, in view of the distinguishing features between the claimed invention and the references which features are not shown or disclosed or made by the references or their obvious combination as discussed above, Appellants respectfully request that the decision of the Examiner in finally rejecting claims 6, 7, 11 and 13 should be REVERSED.

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This Appeal Brief is accompanied by a check in the amount of \$320.00 in payment of the required appeal fee, this amount is believed to be correct, however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 05-1323 (Docket #038738.49626US). A triplicate copy of this Appeal Brief is attached.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #038738.49626US).

November 12, 2003

Respectfully submitted,



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APPENDIX

6. A vehicle with a ramp for a wheelchair, the ramp pivoting about a connection from a lowered position, in which the ramp forms one surface with a vehicle floor and is accommodated by a floor section that is lower than the vehicle floor, towards the ground to assist movement of the wheelchair when an associated door is open, the pivotal connection being arranged at the outside of the floor section,

wherein the floor section serves as a load surface for the wheelchair, and the ramp remains in a secured upright position when the floor section is occupied by the wheelchair.

7. A vehicle according to claim 6, wherein the ramp is connected to the vehicle by at least one vertically displaceable pivot mounting.

8. A vehicle according to claim 6, wherein the ramp has a first and a second movable section, which are connected to one another by at least one hinge, and the first section is connected pivotably to the vehicle at a fixed location, while the second section swings down towards the vehicle floor.

9. A vehicle according to Claim 8, wherein a hinge action of the hinge can be blocked when the ramp is in the secured upright position.

10. A vehicle according to Claim 9, wherein the blocking of the hinge action can be brought about by belt-latch mechanisms.

11. A vehicle ramp assembly for a wheelchair comprising:
a floor section in a vehicle serving as a load surface for the wheelchair lower than a vehicle floor,
a ramp forming one surface with the vehicle floor in a lowered position, accommodated by the floor section, and
a pivotal connection being arranged at the outside of the floor section, wherein the ramp pivots about the connection from the lowered position towards the ground to assist movement of the wheelchair, when an associated door is open, and the ramp remains in a secured second upright position when the floor section is occupied by the wheelchair.

12. A vehicle ramp assembly according to claim 11, wherein the ramp has a first and a second movable section connected to one another by at least one hinge,

and the first section is pivotally connected to the vehicle at a fixed location and the second section swings in towards the vehicle floor.

13. A method of making a vehicle with a ramp for a wheelchair, comprising:

providing a vehicle floor with a lowered floor section serving as a load surface for the wheelchair, and

pivotally connecting a ramp at the outside of the floor section so the ramp swings towards a road surface to assist movement of the wheelchair when an associated door is open,

wherein the ramp in a lowered position forms one surface with the vehicle floor and is accommodated by the lowered floor section, and the ramp remains in a secured upright position when the lowered floor section is occupied by the wheelchair.